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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 301.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, COUNT AND PRINCE OF BEARN AND CHALAIS, APPELLANT,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN BONDING COMPANY OF BALTIMORE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED JULY 13, 1912.

(23,292)

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INDEX.

	Original.	Print
Caption	1	1
Bill of complaint	2	1
Subpœna and return	11	7
Demurrer of American Bonding Company	13	8
Demurrer of Alexander Brown and Sons	15	9
Demurrer of Safe Deposit and Trust Company of Baltimore	17	10
Demurrer of Theodore P. Weis, sheriff of Baltimore	18	11
Opinion of court	20	12
Final decree	28	17
Petition for appeal	30	18
Order allowing appeal	31	18
Assignment of errors	32	19
Appeal bond	36	21
Citation and service	41	25
Stipulation of counsel as to making up transcript of record	42	26
Order to transmit record	44	27
Clerk's certificate	44	27

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1913.

1 UNITED STATES OF AMERICA,
District of Maryland, To wit:

At a District Court of the United States in and for the District of Maryland, Begun and Held in the City of Baltimore on the First Tuesday in March (Being the Fifth Day of the Same Month), in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present: The Honorable Thomas J. Morris, Judge Maryland District; John C. Rose, Judge Maryland District; John Philip Hill, Esq., Attorney; George W. Padgett, Esq., Marshal; Arthur L. Spamer, Clerk.

Among other were the following proceedings to wit:

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr. and Harman Brown Bell, Co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

2 *Bill of Complaint.*

Filed April 16, 1912.

In the United States District Court, for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr. and Harman Brown Bell, Co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

To the Honorable, the Judges of the District Court of the United States in and for the District of Maryland:

Your orator, humbling complaining, shows:

I. That at all the times hereinafter mentioned your orator was

and still is a citizen of the French Republic and a resident and inhabitant of the City of Paris in said Republic, and since the month of August 1910 has been and still is stationed at Pekin, China as Secretary of the Legation of the French Republic at Pekin and was and still is accredited as such.

3 II. That at all the times hereinafter mentioned the defendant the Safe Deposit and Trust Company of Baltimore was and still is, as your orator is informed and believes, a corporation organized under the laws of the State of Maryland and a citizen and inhabitant of said State and of this district, having its principal office in this district.

III. That the defendant Theodore P. Weis is, as your orator is informed and believes, a citizen, resident and inhabitant of the City of Baltimore in the State of Maryland and Sheriff of the City of Baltimore in the State of Maryland, in this district.

IV. That the defendants Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, were at all the times hereinafter mentioned and still are co-partners trading as Alexander Brown and Sons and citizens, residents and inhabitants of the State of Maryland and of this district.

V. That the defendant American Bonding Company of Baltimore was at all the times hereinafter mentioned and still is a corporation of the State of Maryland and a citizen and inhabitant of said State and of this district, having its principal office in this District.

VI. That a sum upwards of Three Thousand Dollars ($3,000) is involved in this action.

VII. That at all the times hereinafter mentioned your orator was and still is the owner of debt of the par value of One hundred and fifty-six thousand Dollars ($156,000) of the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized under the laws of the State of Wisconsin and of debt of the par value of Twenty-nine thousand Dollars ($29,000) of the New York Central and Hudson River Railroad Company, a corpora-

4 tion organized under the laws of the State of New York, which said debts were and still are evidenced by certain bonds of the respective railroad companies named of the par value of One Thousand Dollars ($1,000) each, which said bonds are not negotiable but are evidences that said debts were and are registered upon the books of the respective corporations as follows:

$15,000 New York Central & Hudson River Railroad Company 3½% bonds due July 1st, 1997, numbered 32804-13, 45622, 45786-9, registered in the name of Henry Ross Joseph Gaston de Galard de Bearn, your orator's infant son;

$14,000 New York Central & Hudson River Railroad Company 3½% bonds due July 1st, 1997, numbered 45790, 45792, 45797-808, registered in the name of Beatrice Neva Marie Cecile de Galard de Bearn, your orator's infant daughter;

$78,000 Chicago, St. Paul, Minneapolis & Omaha Railway Company 6% bonds due July 1st, 1930, numbered 22573-650, registered in the name of Henry Ross Joseph Gaston de Galard de Bearn, your orator's infant son;

$78,000 Chicago, St. Paul, Minneapolis & Omaha Railway Company 6% bonds, duly July 1st, 1930, numbered 20666-8, 21293, 22173, 22468, 22501-72, registered in the name of Beatrice Neva Marie Cecile de Galard de Bearn, your orator's infant daughter.

VIII. That by contract, to wit: by the express terms of the respective mortgages or deeds of trust under which such debts have been contracted and are due and outstanding, to which said mortgages or deeds of trust respectively reference is made in the several bonds evidencing such debts, and which provide among other things that any transfer of the title to the said debts other than such transfer upon the books of the said corporations respectively in
5 the City, County and State of New York, is invalid and void, the title to the aforesaid debts of the corporations named was at all the times hereinafter mentioned and still is transferrable only upon the books of the said corporations respectively in the City, County and State of New York.

IX. That at all the times hereinafter mentioned, the said registered bonds were and still are in a safe deposit box in the vault of the Safe Deposit and Trust Company of Baltimore, where your orator, by means of a guardianship proceeding in the Orphans' Court of Baltimore which has since been declared illegal and void, was induced to place said bonds, said box being rented and standing recorded on the books of the said safe deposit Company in the joint names of Messrs. Alexander Brown & Sons and the American Bonding Company; that for the purposes of such guardianship proceeding your orator had in the year 1908 been required by the said American Bonding Company as surety on your orator's bond in said guardianship proceeding to agree not to remove the said bonds without the consent of said surety; and had further been required by said surety to consent that said surety and said Alexander Brown and Sons should only have joint access to said bonds and the same for the sole purpose of enabling said Alexander Brown and Sons to remove interest warrants from said bonds during the said guardianship and forward the same for payment to the City of New York as they became due.

X. That in December 1909 the Court of Appeals of Maryland by a decree founded upon personal jurisdiction over all the parties to said guardianship proceeding declared the said guardianship and certain releases given by your orator in connection therewith null and void; that by said adjudication, the said suretyship of the said American Bonding Company of Baltimore was extinguished and that neither said Bonding Company nor said Alexander Brown and Sons have since said adjudication had any right of access to or other right or control whatsoever in, over or as to said safe deposit
6 box and the contents of the same and said adjudication has established the lack of jurisdiction over said property on the part of the Courts which had so undertaken to deal therewith.

XI. That your orator is entitled to the immediate possession of the said evidences of debt, to wit: registered bonds for all purposes and is in urgent need of them for the purpose of causing said debts to be transferred upon the books of the debtor corporations in the State of New York to the name of your orator or at his option of surrendering said bonds to the said corporations respectively in exchange for the issuance to your orator of other evidences of said debts, to take the place of said bonds now so registered, as he would have done in the year 1908 but for the illegal guardianship proceeding already referred to.

XII. That your orator has been since the month of October 1908 and still is the true lessee of said box the rental of which has been paid with funds furnished by your orator and as above shown at all times owner of the contents thereof; that said Alexander Brown and Sons have not been and are not in any manner responsible either for said box or for the custody of the contents of the same or in or for any matter growing out of the arrangement under which said box was rented and said registered bonds placed therein; that as to the American Bonding Company, it has had no connection with or interest in the rental of said box or the custody of the contents of the same except as surety of your orator upon his bond as guardian, which said suretyship was undertaken in the aforesaid illegal guardianship proceeding which has been declared void and set aside; that at or about the time of the rental of said box and the placing therein of the said registered bonds, your orator subscribed and caused to be delivered to the said Alexander Brown and Sons a writing in the form of a letter addressed to them, dated that day, to which said writing the said American Bonding Company had caused to be
7 subscribed the word "approved" and its name by its secretary and treasurer, which said writing is as follows:

"BALTIMORE, *October 28th*, 1908.

"Messrs. Alexander Brown & Sons, Baltimore, Md.

"GENTLEMEN: I have made arrangements with the American "Bonding Company of Baltimore (my bondsman, as guardian of "the estates of Henry Ross Joseph Gaston de Bearn and Beatrice "Neva Cecile Marie de Bearn), whereby I am to deposit in a box in "the vault of the Safe Deposit & Trust Company, the following "securities, which we have agreed that neither is to remove without "the written consent of the other:

"$15,000 New York Central & Hudson River Railroad 3½% "bonds.

"$78,000 Chicago, St. Paul, Minneapolis & Omaha Railroad 6% "bonds, registered in the name of Henry Ross Joseph Gaston de "Galard de Bearn, and

"$14,000 New York Central & Hudson River Railroad 3½% "bonds.

"$78,000 Chicago, St. Paul, Minneapolis & Omaha Railroad 6% "bonds, registered in the name of Beatrice Neva Marie Cecile de "Galard de Bearn.

"This box in the *value* of the Safe Deposit & Trust Company is

"to be opened only in the joint presence of an officer of the Ameri-
"can Bonding Company and a member of your firm.

"You are to cut the coupons from the bonds as they mature, and
"after retaining from the proceeds a commission to yourself of one-
"half per cent. on amounts collected, and $500 per annum to be
"paid to the American Bonding Company as premium on my bond,
"the balance is to be made subject to my check as Guardian. Your
"responsibility is to be limited to the clipping of coupons and credit-
"ing the same, and you are to be in no manner responsible for the
"custody of the bonds or for any other matter connected with or in
"any way growing out of the above arrangement.

"It is understood also that you shall have the right to terminate
"your employment in this matter at any time upon reasonable notice
"to myself and the American Bonding Company.

"Very truly yours,

"(Signed) PRINCE DE BEARN ET DE CHALAIS.

"Approved:

"(Signed) AMERICAN BONDING COMPANY,

"By WILLIAM E. DUVALL,

Secretary and Treasurer."

That as your orator is informed and believes, said American Bonding Company of Baltimore, and said Alexander Brown and Sons make no claim as to said box or personal claim as to its contents antagonistic to your orator; that your orator makes no personal claim herein against said American Bonding Company and said Alexander Brown and Sons, but that your orator is unable to secure access to said box and to withdraw its contests except by virtue of and under a decree in equity such as is applied for herein, as hereinafter shown; and that your orator is advised that such decree is likewise necessary to protect the Safe Deposit and Trust Company as landlord and as controlling physical access to said box against liability in the premises as hereinafter shown.

8 XIII. And your orator further shows that the defendant sheriff has filed in the Superior Court of Baltimore, a Court of law of the State of Maryland, returns to certain writs of attachment stating that he has seized the aforesaid particular debts under such writs issued out of said Court in five suits brought by divers non-residents of the State of Maryland against your orator upon the ground of your orator's non-residence in said State to recover upon divers claims alleged to have arisen out of said State; that the said proceedings of the said defendant Sheriff under said writs purporting under color of the attachment statutes of Maryland and of said writs to seize said debts which are owned by your orator in the State of New York, are illegal and void; that your orator has not been personally served with process in said suits; that said debts have not and cannot be seized under said writs not being property in the State of Maryland; that the defendant sheriff by his said proceedings under said writs has attempted and is attempting to interfere with said box and its contents and to encumber your orator's title to said particular debts and has sought and is seeking to deprive you

orator of his property and of the effective control thereof and of the use thereof without due process of law and to deprive your orator of the equal protection of the laws in violation of the Constitution of the United States and particularly of Section I. of the fourteenth amendment thereto; that said Superior Court of Baltimore City has no personal jurisdiction over your orator and has not gained jurisdiction over the aforesaid box or its contents or over the debts owned by your orator in the State of New York, and the said defendant Sheriff has no lawful authority to impede or seek to impede or hinder your orator in the premises nor to do any act tending to defeat your orator's control of the said debts or the evidences thereof or to prevent your orator from securing the relief applied for herein, and which this Court has jurisdiction to grant your orator, and that the said unlawful proceedings of the said Sheriff under color of
9 said writs will, if persisted in, constitute an unlawful interference with the jurisdiction of this Court in the premises.

XIV. That your orator has no adequate remedy at law.

To the end, therefore, that your orator shall not, under color of any law, statute, regulation, custom or usage of the State of Maryland, be deprived of the rights, privileges and immunities secured to him as aforesaid by the Federal Constitution.

1. That it be decreed and determined that your orator is the true lessee of said box and entitled to secure access to the same and withdraw the contents thereof either in person or by his duly authorized representative.

2. (*a*) That the Sheriff be enjoined and restrained from in any manner interfering with the said box and its contents;

(*b*) That pending this action he be so enjoined that this Court be not hindered in its jurisdiction over this cause.

3. That your orator have such other and further relief as to the Court may seem just in the premises.

May it please your honors to grant unto your orator not only the writ or writs of injunction conformable to the prayer of this bill but also the writ or writs of subpœna of the United States directed to the said defendants the Safe Deposit and Trust Company of Baltimore, the American Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, therein and thereby commanding them and each of them to appear in this Court at a certain day to be therein named to answer the premises and abide by and perform such orders and decrees as may be passed therein.

Baltimore April 16th, 1912.

PRINCE DE BEARN ET DE CHALAIS,
By MAURICE LEON, *Solicitor.*

10 UNITED STATES OF AMERICA,
State of Maryland, City of Baltimore, ss:

On this 16th day of April, 1912, before me personally appeared Maurice Leon, attorney-in-fact for the complainant in the above entitled cause, who being by me duly sworn as to the truth of the alle-

gations made in the above bill, says: that he has read the foregoing bill and knows the contents thereof and that the same is true of the best of his knowledge, information and belief; that the reason why this verification is made by deponent instead of by complainant is that this deponent is the duly authorized attorney-in-fact of the complainant who is at present without the United States of America.

MAURICE LEON.

Subscribed and sworn to before me the day and year first above written.

ARTHUR L. SPAMER,
Clerk of the District Court of the United States
for the District of Maryland.
By CHAS. W. ZIMMERMANN, *Deputy.*

11 *Subpœna.*

Issued April 16, 1912.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Safe Deposit and Trust Company of Baltimore, American Bonding Company, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, as sheriff of the city of Baltimore, in the State of Maryland, Greeting:

You are hereby commanded that all excuses and delays — set aside you be and appear at the Clerk's office of the District Court of the United States for the District of Maryland on the first Tuesday in May next, to answer unto the bill of complaint of Louis Elie Joseph Henry De Galard De Brassac De Bearn, Count and Prince of Bearn and Chalais in said court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable John C. Rose, Judge of the District Court of the United States for the District of Maryland the 16th day of April in the Year of Our Lord, 1912.

Issued 16th day of April, 1912.

[SEAL OF COURT.] ARTHUR L. SPAMER, *Clerk.*

MEMORANDUM.—The defendants are required to enter their appearance in the suit in the Clerk's Office on or before the first Tuesday of May next; otherwise the Bill may be taken pro confesso.

12 *Marshal's Return Attached to Above Subpœna.*

Summoned the Safe Deposit & Trust Company of Baltimore, by service on H. H. M. Lee, its Secretary, also summoned the American Bonding Company, by service on G. L. Radcliffe, its 2nd Vice President, also summoned Alexander Brown, Austin McLanahan, B.

Howell Griswold, Jr., and Herman Brown Bell, copartners, trading as Alexander Brown & Sons, by service on Herman Brown Bell, a member of said firm, also summoned Theodore P. Weis as Sheriff of the City of Baltimore, and copy of Subpœna in Equity left with each of them, at Baltimore, Maryland, April 16, 1912.

GEORGE W. PADGETT,
U. S. Marshal.

13 *Demurrer of American Bonding Company of Baltimore.*

Filed May 24, 1912.

In the United States District Court for the District of Maryland.

(In Equity.)

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland.

The Demurrer of the American Bonding Company of Baltimore to the Bill of Complaint, filed in the above case.

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the said Bill of Complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill. And for cause of demurrer showeth:

(1) That it appears by the plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against this defendant.

(2) That it appears by the said Bill that there are divers other persons who are necessary parties to the said bill, but who are not made parties thereto.

14 (3) That it appears by said Bill that the bonds therein mentioned are now in the possession and under the control of the Superior Court of Baltimore City.

This Court, therefore, is without jurisdiction to, and will not grant the relief prayed.

Wherefore and for divers other causes of demurrer appearing on the said bill, this defendant doth demur thereto. And it prays the judgment of this Honorable Court, whether it shall be compelled to make any answer to the said bill; and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

EDW'D DUFFY,
Solicitor for American Bonding Company of Baltimore.

I hereby certify that the aforegoing demurrer is in my opinion well founded in point of law.

EDW'D DUFFY,
Solicitor for American Bonding Company of Baltimore.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this 24th day of May in the year Nineteen Hundred and Twelve, personally appeared before me, a Notary Public of the State of Maryland in and for Baltimore City aforesaid, duly commissioned and qualified, George L. Radcliffe, and made oath in due form of law that he is the Vice-President of the American Bonding Company of Baltimore, and that the aforegoing demurrer is not interposed for delay.

Witness my hand and notarial seal.

[NOTARY'S SEAL.] MILLARD LEONARD,
Notary Public.

15 *Demurrer of Alexander Brown and Sons.*

Filed May 28, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland.

The Demurrer of Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown & Sons, to the Bill of Complaint, filed in the above case.

These defendants by protestation, not confessing or acknowledging all or any of the matters or things in the said Bill of Complaint contained to be true in such manner and form as the same are therein set forth and alleged, to demur to the said bill. And for cause of demurrer show:

(1) That it appears by the plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against these defendants.

(2) That it appears by said Bill that the bonds therein mentioned have been attached in divers suits brought in the Superior Court of Baltimore City, and that said suits are still pending therein.

16 (3) That it appears by the said Bill that there are divers other persons who are necessary parties to the said bill but who are not made parties thereto.

Wherefore and for divers other causes of demurrer appearing on the said bill, these defendants do demur thereto. And these defendants pray the judgment of this Honorable Court, whether they shall be made to make any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

GRISWOLD & MARSHALL,
Solicitors for Alexander Brown & Sons.

We hereby certify that the aforegoing demurrer is in our opinion well founded in point of law.

GRISWOLD & MARSHALL,
Solicitors for Alexander Brown & Sons.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this 28th day of May, 1912, before me a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid, personally appeared Harman Brown Bell who made oath in due form of law that he is one of the partners in the firm of Alexander Brown and Sons with authority to make this affidavit, and that the aforegoing demurrer is not interposed for delay.

Witness my hand and Notarial Seal.

[NOTARY'S SEAL.] E. GILL BOWLING,
Notary Public.

17 *Demurrer of Safe Deposit and Trust Company of Baltimore.*

Filed May 31, 1912.

In the United States District Court for the District of Maryland.

In Equity.

PRINCE DE BEARN
vs.
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE et al.

And the defendant, the Safe Deposit and Trust Company of Baltimore, by leave of court having withdrawn its answer heretofore filed to the bill in the above cause, demurs to the whole of said bill, and for ground of demurrer shows:

1. That the plaintiff has not stated in his said bill such a case as to entitle him to any relief in equity against this defendant.

2. Because it appears from said bill that the plaintiff has not made the plaintiffs in the attachment cases referred to in said bill, parties to this cause, and the said plaintiffs are indispensable parties to this cause for the relief prayed in said bill.

3. And because this Honorable Court is without jurisdiction to enjoin the prosecution of the attachment cases pending in the Superior Court or the seizure or sale of the bonds mentioned in said bill.

VENABLE, BAETJER & HOWARD,
Solicitors for Safe Deposit and Trust Company of Baltimore.

18 *Demurrer of Theodore P. Weis, Sheriff of Baltimore.*

Filed May 31st, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland.

The Demurrer of Theowore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, filed in the above proceedings in lieu of the answer heretofore filed, leave to with-draw which hath already been granted by this Honorable Court, respectfully shows:

(1) That it appears by Plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against this defendant.

(2) That it appears by the said bill that there are divers other persons who are necessary parties to the said bill; but who are not made parties thereof.

(3) That it appears by said bill that the bonds therein mentioned are now in the possession and under the control of the Superior Court of Baltimore City. This Court, therefore is without jurisdiction to, and will not grant the relief prayed.

19 Wherefore and for divers other causes of demurrer appearing on the said bill, this Defendant doth demur thereto, and prays the judgment of this Honorable Court, whether it shall be compelled to make any answer to the said bill; and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

WM. C. SMITH,
Solicitor for Theodore P. Weis,
Sheriff of the City of Baltimore.

STATE OF MARYLAND,
City of Baltimore, to wit:

I hereby certify that on this 3rd day of June, 1912, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, personally appeared Theodore P. Weis, Sheriff of the City of Baltimore, and made oath in due form of law that the matters and facts contained in the foregoing demurrer are true, and that said demurrer is not intended for delay.

As witness my hand and Notarial Seal.

[NOTARY'S SEAL.] AUGUSTUS W. BRADFORD,
Notary Public.

20 *Opinion of the Court.*

Filed June 3, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,
vs.
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, Trading as Alexander Brown and Sons, and Theodore P. Weis, as Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

ROSE, *District Judge:*

The defendants have demurred to the bill of complaint. In so far as its allegations are well pleaded, they are upon this hearing to be taken as true. They are in substance as follows:

The complainant is a citizen of the French Republic. The individual defendants are citizens of Maryland. The corporate defendants are corporations of that State. The amount in controversy exceeds $3,000. The complainant is the owner of some $156,000 of debts of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, a Wisconsin corporation, and of $29,000 of debts of the New York Central and Hudson River Railroad Company, a New York corporation. These debts are evidenced by bonds. The bonds are registered in the name of one or the other of the complainant's infant children. These bonds are secured by deeds of trust.

21 By their terms any transfer of title to these bonds shall be invalid and void unless made upon the books of said corporations, respectively, in the City, County and State of New York.

On or prior to October 28, 1908, the complainant had been appointed by the Orphans Court of Baltimore City guardian for his two children. These evidences of debts were then supposed to be-

long to them. He was required to give bond as guardian. The defendant, the American Bonding Company of Baltimore, agreed to become his surety thereon. The terms of such agreement were set forth in a letter written by the complainant to the defendants, Alexander Brown & Sons. This letter was approved by the American Bonding Company. In it the complainant said the bonds had been placed in a box in the vaults of the defendant, the Safe Deposit and Trust Company of Baltimore. He promised not to remove the bonds therefrom without the consent of the American Bonding Company. Access to the box was restricted to the last named company and Alexander Brown & Sons jointly. It was given for the sole purpose of allowing the latter to remove interest warrants from the bonds during the guardianship and to forward the same to New York for payment. In December 1909 the Court of Appeals of Maryland, at the suit of the complainant, declared the said guardianship and certain releases given in connection therewith, null and void.

Prince de Bearn vs. Winans, 111 Md., 434.

By such decree the suretyship of the American Bonding Company was extinguished and with it the sole purpose for which the bonds were placed in the custody of the American Bonding Company and Alexander Brown & Sons. The complainant became entitled to the immediate possession of said evidence of debts. He has urgent need of them. Five suits have been brought against the complainant in the Superior Court of Baltimore City. The plaintiffs in all those cases are non-residents of the State of Maryland. The claims upon which they are brought arose outside of that State. On the ground of the complainant's non-resi-
22 dence, the plaintiffs in these suits caused writs of attachment to issue out of said court directed to the defendant sheriff. The last named made return upon said writs that he has seized thereunder the particular debts or bonds. The complainant has not been personally served with process in said suits. The American Bonding Company and Alexander Brown & Sons make no claim to the box or personal claim to its contents antagonistic to the complainant. Because of such action upon the part of the sheriff complainant is unable to secure access to said box or to remove its contents. Complainant makes no personal claim against the American Bonding Company or Alexander Brown & Sons. He joins the Safe Deposit and Trust Company as defendant merely to obtain against it a decree which will protect it as landlord and as controlling physical access to said box against liability in the premises.

As conclusions of law from the facts above stated, the complainant alleges that the proceedings of the defendant sheriff under said writs purporting under color of the attachment statutes of Maryland and of said writs to seize said debts which are owned by the complainant in the State of New York, are illegal and void. He says the said debts are not property in the State of Maryland and therefore have not and cannot be seized under said writs. He charges that the defendant sheriff by his proceedings under the writs

of attachment is attempting to interfere with said box and its contents and to encumber complainant's title to said particular debts, and has sought and is seeking to deprive complainant of his property and of the effective control and use thereof without due process of law, and to deprive the complainant of the equal protection of the laws in violation of the Fourteenth Amendment. He asserts that the Superior Court of Baltimore City has no personal jurisdiction over him and has not gained jurisdiction over the box or its contents or over the debts owned by the complainant in the State of New York.

23 The bill prays that the complainant be decreed to be the true lessee of the box and entitled to access to the same and to withdraw the contents thereof either in person or by his duly authorized representative; that the sheriff be enjoined and restrained from in any manner interfering with the said box and its contents, and that pending this action the sheriff be enjoined so that this Court be not hindered in its jurisdiction over this cause, and for other and further relief.

It will be necessary to consider only two of the objections which defendants make to the legal sufficiency of the bill.

They say, first, the plaintiffs in the attachment suits are indispensable parties and they have not been brought in.

Second, before the filing of the bill a State Court has assumed jurisdiction of, and was exerting control over, the property which the complainant asks this Court to put into his hands. With such jurisdiction and control, this Court it is said may not lawfully interfere.

Complainant answers in effect, that the properties upon which the sheriff has attempted to levy are debts due him. That neither he nor the corporate debtors are residents of Maryland or in any wise subject without their consent to the jurisdiction of the Courts over their persons. That by the contract between him and his debtors his rights to those debts cannot be transferred from him elsewhere than in the City of New York, a place in which the writs of the Maryland Courts will not run. It follows, he argues, that the so-called attachment proceedings are utterly void. The sheriff is a mere wrong-doer. The complainant is entitled to ignore altogether the persons at whose suit the writs issued, the Court by which they were issued, and the writs themselves. The bill itself shows that there are in Maryland certain pieces of paper called bonds which are evidences of the debts due to the complainant.

24 Without possession of these pieces of paper complainant cannot obtain the beneficial enjoyment in possession of the debts in question, because of certain writs which the State Court has issued and caused to be levied by its officer, the defendant sheriff, upon such pieces of paper and to be laid in the hands of the defendants who have either the actual physical custody of such pieces of paper or the right of access thereto. In short, the attaching creditors say those pieces of paper are attachable, and that they may by subjecting them to their attachments compel the application of the debts evidenced by such pieces of paper, to the payment

of their claims against the complainant. Complainant says they are not attachable.

It cannot be said that the contentions of the attaching creditors are so utterly unreasonable that — may be regarded as merely colorable. Apparently they have received the sanction of the highest Court of Maryland.

de Bearn vs. Prince de Bearn, 115 Md., 668.

Nevertheless, the complainant asks this Court to decide that controversy against the attaching creditors, to declare that the claims which they are asserting under the writs of attachment are without foundation, and to direct that the things upon which they have levied be taken out of the custody of the Court in which their suits are pending, and that all this shall be done in a proceeding to which they are not parties.

Whether the control over these bonds which the attaching creditors are now exercising and which it is the object of this bill to put an end to, is de jure, for the present purpose matters little. It may be presumed that they say it is. The complainant by filing the bill admits that it exists de facto. If it did not this suit would not have been brought. Before this Court may adjudge that the attaching creditors are wrong, they must have their day at its bar. The defendants here for their own protection must bring to the attention of this Coutr the fact that the plaintiffs in the attachment suit have not been made parties. If this was not done and their absence should chance to be overlooked, it might well be that such parties would not be bound by the decree. It would then afford no protection as against them to one who acted under it. In short, the attaching creditors not only have an interest in the controversy here pending, but that interest is of such a nature that a final decree cannot be made without affecting that interest or without leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience. They are therefore indispensable parties to this proceeding.

Shields vs. Barrow, 17 Howard, 139;
California vs. Southern Pacific Co., 157 U. S., 249.

This rule has been recently and rigidly applied by the Circuit Court of Appeals for this Circuit.

Baltimore, Chesapeake & Atlantic Ry. Co. vs. Godeffroy, 182 Fed., 525.

The complainant may if so advised amend his bill by making the attaching creditors parties defendant.

The second ground of objection is one which cannot be so easily gotten rid of. This Court may not take anything, be it safe deposit boxes, bonds, evidences of debt or what not, out of the custody of a State Court. The complainant does not question the general rule. He claims that is not here applicable. He says that while the Superior Court has jurisdiction to issue writs of non-resident

attachment, the things which its officer has sought to attach in this case are not attachable. It follows, he argues, that this Court may and must when properly applied to altogether ignore such void proceedings.

The Court of Appeals of Maryland has expressly decided that a Court of Equity may not assume to declare such attachments altogether nugatory.

de Bearn vs. Winans, 115 Md., 139.

See also:

26 de Bearn vs. Winans, 115 Md., 604;
de Bearn vs. de Bearn, 115 Md., 668;
de Bearn vs. de Bearn, 115 Md., 685.

It was there decided that such evidences of debt or bonds as are involved in the pending case may be attached in Maryland.

Neither the Superior Court of Baltimore City nor this Court have any control over the other. If it should be here held that the things in question were not attachable, that Court would be under no obligation to subordinate its judgment to that of this Court. A conflict of jurisdiction would follow. The rule that one Court of concurrent jurisdiction may not attempt to exercise control over anything which has previously come into and still is in the control of the other Court is intended to render such unseemly controversies impossible. The facts of this case bring it within both the letter and spirit of that rule.

If the complainant is right in asserting that these bonds are not attachable in Maryland and that any attachment of them in this State is a violation of rights secured to him by the Federal Constitution, he will not by what is here decided be denied the opportunity to have his contentions passed upon by the highest Court of the Nation. If there shall be final judgments of condemnation in the attachment cases, and those judgments shall be affirmed by the Court of Appeals, the complainant may sue out his writ of error to the Supreme Court. That tribunal has the right to correct any mistakes which, in passing upon a Federal question, a State Court may make. No such power has been given to this Court. In so saying there is, of course, no intention of suggesting that in this case any mistake has been made.

Technically, as this is a hearing upon demurrer, this Court may not be entitled to take judicial notice of the fact that to all the cases in 111 and 115 Md. cited in this opinion the complainant was a party. The conclusions herein stated have been reached,

27 therefore, without considering whether the question as to whether a Court of Equity may interfere with these attachment proceedings and whether the evidences of debt are under the circumstances of this case attachable have been decided contrary to the contention of the complainant in a case to which he was a party and which had reference to the very attachment proceedings which he seeks here to have declared invalid.

The demurrer must be sustained. As the complainant elects to stand on his bill as originally filed, and does not wish to amend, it will be dismissed at his cost.

28 *Final Decree.*

Filed May 31, 1912.

United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,
against
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE; AMERICAN Bonding Company of Baltimore; Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, Defendants.

Final Decree.

This cause having come on for hearing upon the demurrers filed to the bill by the American Bonding Company of Baltimore and Alexander Brown, Austin McLanahan, B. Howell Griswold, and Harman Brown Bell, copartners trading as Alexander Brown and Sons, defendants herein and the defendants Safe Deposit and Trust Company of Baltimore and Theodore P. Weis, having by leave of Court withdrawn their answers to the bill herein and joined in the demurrers to said bill, now after hearing counsel for the respective defendants in support of said demurrers and counsel for the complainant in opposition thereto and due deliberation having been had,

it is this 31 day of May, 1912, ordered, adjudged and decreed
29 that the said demurrers be and the same hereby are sustained,

And the complainant, through his counsel having elected to stand on said bill without amendment of the same, it is further ordered, adjudged and decreed that the bill of the complainant herein be, and the same hereby is finally dismissed for want of jurisdiction, and for lack of indispensable parties, i. e., the plaintiffs in the attachment cases mentioned in the bill, and that final judgment, be and the same hereby is granted in favor of the said defendants and against said complainant for the sum of Twenty-two Dollars and fifteen cents, defendants' costs of this suit.

JOHN C. ROSE,
District Judge.

30 *Petition for Appeal, Assignment of Errors, and Order of Court Allowing Appeal.*

Petition and Assignment of Errors Filed June 7, 1912.

Order of Court Filed June 12, 1912.

District Court of the United States for the District of Maryland.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant-Appellant,

against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE; AMERICAN Bonding Company of Baltimore; Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore in the State of Maryland, Defendants-Respondents.

The above named complainant, Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais, considering himself aggrieved by the final decree entered in this cause on the 31st day of May, 1912, doth hereby appeal from said final decree to the Supreme Court of the United States and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said final decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, June 7th, 1912.

MAURICE LEON,
Solicitor for Prince of Bearn and Chalais, Complainant-Appellant.

31 And Now, to wit, on June 12, 1912, it is ordered that the appeal be allowed as prayed for, and the penalty of the appeal bond to be given for costs is hereby fixed at $500.00.

JOHN C. ROSE,
United States District Judge.

32 District Court of the United States for the District of Maryland.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant-Appellant,

against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE; AMERICAN Bonding Company of Baltimore; Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore in the State of Maryland, Defendants-Respondents.

And now, on this 7th day of June, 1912, came the complainant, by his solicitor, Maurice Leon, and said that in the record and proceedings, decision and final decree of the United States District Court for the District of Maryland in the said suit or action there is manifest error, in this to wit:

1. That the said Court erred in sustaining the demurrers of the defendants to the bill of the complainant herein, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States, and especially of Section I. of the fourteenth amendment thereto.

2. That the said Court erred in holding and decidng that complainant was not entitled to any relief upon the bill by him filed in this cause, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I. of the fourteenth amendment thereto.

33 3. That the said Court erred in holding and deciding that the bill of complaint be dismissed, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

4. That the said Court erred in holding and deciding that upon the facts appearing on the face of the complainant's bill, the persons seeking to attach the property represented by the evidences of debt as alleged in said bill are indispensable parties to the cause, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

5. That the said Court erred in holding and deciding that upon the facts appearing on the face of the complainant's bill, the persons seeking to attach the property represented by the evidences of debt as alleged in said bill are necessary parties to the cause, thereby holding and deciding that said complainant might be deprived of his

property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

6. That the Court erred in holding and deciding that upon the face of the allegations of complainant's bill in this cause, the property of the complainant mentioned and described in said bill is subject to the prior jurisdiction of the Superior Court of Baltimore City, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

34 7. That the said Court erred in holding and deciding that upon the face of the allegations of the complainant's bill in this cause, the evidences of debt mentioned and described in the complainant's bill are subject to the prior jurisdiction of the Superior Court of Baltimore City, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

8. That said Court erred in holding and deciding that it did not have jurisdiction of the subject-matter of this cause, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

9. That said Court erred in holding and deciding that it did not have jurisdiction to decree that the complainant is entitled to secure access to the safe deposit box mentioned and described in the bill and withdraw the contents thereof, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States and especially of Section I of the fourteenth amendment thereto.

10. That the said Court erred in holding and deciding that the physical presence in Maryland of the evidences of debt mentioned and described in the bill filed in this cause constituted property in the State of Maryland liable to seizure and condemnation in said State by the Courts of said State, thereby holding and deciding that said complainant might be deprived of his property without due process of law and deprived of the equal protection of the laws in violation of the Constitution of the United States, and especially Section I of the fourteenth amendment thereto.

35 The contention that depriving the complainant of the property described in the bill and the evidences thereof, also described in the bill, constituted a violation of the Constitution of the United States, and especially of Section I of the fourteenth amendment thereto, was distinctly urged before said Court in paragraph numbered XIII of the bill filed by the complainant in this

cause, which said bill was finally dismissed by the decree appealed from herein.

Wherefore complainant respectfully prays that the said decree be reversed and the District Court directed to grant the complainant such relief as is prayed for by said bill.

Dated, June 7, 1912.

MAURICE LEON,
Solicitor for Complainant-Appellant.

36 *Appeal Bond.*

Filed June 7, 1912, and Approved June 12, 1912.

American Surety Company of New York.

Capital and Surplus Over $6,000,000.

District Court of the United States for the District of Maryland.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant-Appellant,

against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants-Respondents.

Know all men by these presents, That we, Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais, as Principal, and the American Surety Company of New York, a corporation, as Surety, are held and firmly bound unto the above named defendants in the sum of five hundred ($500.) dollars, to be paid to the said defendants, their executors, administrators, successors or assigns; to which payment well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 7th day of June, 1912.

Whereas, lately at a session of the District Court of the United States for the District of Maryland in the above entitled suit a decree was rendered against the above named Complainant-Appellant on the 31st day of May, 1912, and the said Complainant-Appellant above named having obtained, or being about to obtain, from said Court in open court an order allowing an appeal to the Supreme Court of the United States to reverse the decree aforesaid.

Now the condition of this obligation is such, that if the said complainant-appellant against whom said decree was rendered shall prosecute his appeal to effect, and shall answer all costs that may

be awarded against him in case he shall fail to make his
37 plea good, then this obligation to be void, otherwise to remain in full force and virtue.

AMERICAN SURETY COMPANY OF NEW YORK,
By MARSHALL L. BROWER,
Resident Vice President.

[L. S.]

Attest:

M. W. DIVINE,
Resident Assistant Secretary.
PRINCE DE BEARN ET DE CHALAIS,
By MAURICE LEON, *Sol. & Att'y.*

Approved:
JOHN C. ROSE,
District Judge.

38 STATE OF NEW YORK,
County of New York, ss:

On this 6th day of June, 1912, before me personally appeared Marshall L. Brower, Resident Vice President of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say; that he resides in The City of New York, N. Y.; that he is the Resident Vice President of the American Surety Company of New York; the Corporation described in and which executed the above instrument; that he knows the corporate seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said Corporation, and that he signed his name thereto by like order; and that the liabilities of said Corporation do not exceed its assets as ascertained in the manner provided by law. And the said Marshall L. Brower further said that he is acquainted with M. W. Divine, and knows him to be one of the Resident Assistant Secretaries of said Corporation; that the signature of said M. W. Divine subscribed to the said instrument, is in the genuine handwriting of the said M. W. Divine, and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him the said Marshall L. Brower Resident Vice President.

[L. S.]

E. A. FARRELL,
Notary Public, New York County, No. 7; Register's Office, New York County, No. 3002. Certificate filed in all Counties.

39 STATE OF NEW YORK,
County of New York, ss:

M. W. Divine being duly sworn, says: That he is a Resident Assistant Secretary of the American Surety Company of New York; that said Company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the

requirements of the laws of said State applicable to said Company, and is duly qualified to act as surety under such laws. That said Company has also duly complied with and is duly qualified to act as surety under the Act of Congress of August 13, 1894, entitled "An Act relative to recognizances, Stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said Company as rendered pursuant to section 4 of said Act of Congress; that said statement is true and that said American Surety Company of New York is worth more than $6,000,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

M. W. DIVINE.

Subscribed and sworn before me this 6th day of June, 1912.

[L. S.] E. A. FARRELL,
Notary Public, New York County, No. 7; Register's Office, New York County, No. 3002. Certificate filed in all Counties.

39½ American Surety Company of New York.

Incorporated April 14, 1884.

General Offices, 100 Broadway.

Financial Statement, March 31, 1912.

Resources.

Real Estate—			
Home Office Building and Land, unencumbered	$3,000,000.00		
N. Y. City Water Front, unencumbered	166,047.91	$3,166,047.91	
Stocks and Bonds, Market Value		4,130,151.50	
Guaranteed Mortgages		195,250.00	
Cash in Banks and Offices		662,079.31	
Premiums in Course of Collection		491,351.91	
Accrued Interest and Rents		54,307.17	$8,699,187.80

Liabilities.

Capital Stock	$2,500,000.00	
Surplus	3,904,228.54	
Reserve for Re-Insurance	1,550,949.53	
Reserve for Contingent Claims	645,339.09	
Reserve for Contingent Expenses	60,000.00	
Bills and Accounts Payable, not due	38,670.64	$8,699,187.80

40 *Extract from the Record Book of the Board of Trustees of the American Surety Company of New York.*

The first quarterly meeting of the Board of Trustees of the American Surety Company of New York, after the annual Stockholders' meeting, was held at the office of the Company, No. 100 Broadway, New York City, on Wednesday, January 17, 1912, at 12 o'clock noon.

"The Secretary read the report of the Nominating Committee as follows:

"To the Board of Trustees of the American Surety Company of New York.

"GENTLEMEN: The committee appointed by the Executive Committee of this Company at their meeting held Tuesday, December 12, 1911, for the purpose of nominating officers of the Company, * * * for the ensuing year and until their successors are elected, beg leave to report as follows:

"We nominate for * * *

Place.	Resident Vice-Presidents.	Resident Assistant Secretaries.
New York, N. Y.	Richard Deming	A. L. Adams
	Horace P. Hollister	Marshall L. Brower
	Marshall L. Brower	William H. Bishop
	A. E. Cotterell	Horace P. Hollister
	Henry D. King	Jared F. Harrison
		A. E. Cotterell
		M. W. Divine

* * * * * * *

"Whereupon, it was

"Resolved, that the Secretary be authorized to cast one ballot on behalf of the Trustees present for the officers, members of the Executive Committee, Finance Committee, Committee on Accounts, Committee on Capital Box, and Counsel, as recommended by the Nominating Committee for the ensuing year and until their successors are elected; which was done, and thereupon the aforementioned persons were declared to have been unanimously elected to their respective offices for the ensuing year and until their successors are elected.

* * * * * * *

"The following resolution was adopted:

"Resolved, that the Resident Vice Presidents be and they hereby are, and each of them is hereby, authorized and empowered to execute and to deliver and to attach the seal of the Company to any and all obligations for or on behalf of the Company, such obligations, however, to be attested in every instance by the Resident Assistant Secretary."

* * * * * * *

STATE OF NEW YORK,
County of New York, ss:

I, H. A. Reiss, Assistant Secretary of the American Surety Company of New York, do hereby certify that I have compared the foregoing extracts and transcripts, from the Record Book of the Board of Trustees of the American Surety Company of New York, with the original record of said Board, and that the same are correct extracts and transcripts therefrom as they appear of record and are set forth and contained in said Record Book; and I further certify that I have compared the foregoing resolutions with the originals thereof, as recorded in the Minute Book of said Company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolutions; and that the said resolutions have not been revoked or rescinded.

Given under my hand and the seal of the Company, at the City of New York, this 19th day of January, 1912.

[L. S.] H. A. REISS,
Assistant Secretary.

41 UNITED STATES OF AMERICA, *ss:*

To Safe Deposit and Trust Company of Baltimore, American Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, copartners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the city of Baltimore, in the State of Maryland, **Greeting:**

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington within thirty days from the date hereof pursuant to appeal filed in the office of the Clerk of the District Court of the United States for the District of Maryland wherein Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais is appellant and you and each of you are respondents, and appellees to show cause if any there be, why the final decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 12th day of June in the year of our Lord one thousand nine hundred and twelve.

JOHN C. ROSE,
United States District Court Judge.

[Seal United States District Court, Maryland.]

Attest:

ARTHUR L. SPAMER,
Clerk U. S. District Court for District of Maryland.

Service of the within citation acknowledged this 21st day of June 1912.

CHARLES McH. HOWARD,
Solicitor for Safe Deposit & Trust Co. of Balto.
EDW. DUFFY,
Sol. for American Bonding Co.
WM. C. SMITH,
Solicitor for Sheriff.
CHARLES A. MARSHALL,
Solicitor for Alexander Brown & Sons of Baltimore.

42 ***Stipulation of Counsel as to Making up Transcript of Record.***

Filed June 25, 1912.

In the United States District Court for the District of Maryland.

In Equity.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, Count and Prince of Bearn and Chalais, Complainant,
against
SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN Bonding Company of Baltimore, Alexander Brown, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, Copartners, Trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Defendants.

It is stipulated and agreed by and between the parties to this cause, that the transcript of record on complainant's appeal to the Supreme Court of the United States, in said case shall consist of the following, viz.:

1. Bill of Complaint,
2. Subpœna,
3. Demurrer of American Bonding Company,
4. Demurrer of Alexander Brown and Sons,
5. Demurrer of Safe Deposit and Trust Company,
6. Demurrer of Theodore P. Weis, Sheriff of the City of Baltimore,

43 7. Opinion of the Court,
8. Decree,
9. Petition for Appeal, Order of Court allowing Appeal and Assignment of Errors,
10. Appeal Bond,
11. Citation,
12. Stipulation of Counsel as to making up Transcript of Record,
13. Order to transmit record,
14. Clerk's Certificate,

and such other formal matter as is usually inserted in such transcripts.

MAURICE LEON,
Solicitor for Complainant.
CHARLES McH. HOWARD,
Solicitor for Safe Deposit and Trust Company of Baltimore.
EDW'D DUFFY,
Solicitor for American Bonding Company of Baltimore.
CHARLES A. MARSHALL,
Solicitor for Alexander Brown and Sons.
WM. C. SMITH,
Solicitor for Theodore P. Weis, Sheriff of the City of Baltimore.

44 *Order to Transmit Record.*

And thereupon, it is ordered by the court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Test:

ARTHUR L. SPAMER, *Clerk.*

Clerk's Certificate.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, Arthur L. Spamer, Clerk of the District Court of the United States for the District of Maryland, do hereby certify that the aforegoing is a true transcript of the record and proceedings of the said District Court, together with all things thereunto relating, in the therein entitled cause, made up in accordance with stipulation of counsel for the respective parties, filed in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, this 27th day of June, 1912.

[Seal United States District Court, Maryland.]

ARTHUR L. SPAMER, *Clerk.*

45 [Endorsed:] In the Supreme Court of the United States. Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Chalais, Appellant, vs. Safe Deposit & Trust Company of Baltimore, American Bonding Company of Baltimore, Austin McLanahan, B. Howell Griswold, Jr., and Harman Brown Bell, co-partners, trading as Alexander Brown and Sons, and Theodore P. Weis, Sheriff of the City of Baltimore, in the State of Maryland, Appellees. Transcript of Record.

Endorsed on cover: File No. 23,292. Maryland D. C. U. S. Term No. 301. Louis Elie Joseph Henry de Galard de Brassac de Bearn, Count and Prince of Bearn and Chalais, appellant, vs. Safe Deposit and Trust Company of Baltimore, American Bonding Company of Baltimore et al. Filed July 13th, 1912. File No. 23,292.

Supreme Court, U. S.
FILED
MAR 17 1914
JAMES D. MAHER
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 301.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BÉARN, COUNT AND PRINCE OF BÉARN AND CHALAIS,

Appellant,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN BONDING COMPANY OF BALTIMORE *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

APPELLANT'S BRIEF.

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Statement of the Case.

This case comes here by direct appeal from a final decree of the District Court of the United States for the District of Maryland sustaining demurrers filed by all the defendants to the complainant's bill in equity and finally dismissing the bill for want of jurisdiction (p. 17). The case is thus presented upon conceded facts.

The complainant is a French citizen suing two corporations and divers individuals, all citizens of Maryland (fols. 2, 3). He is the owner of debts of two railroad corporations, one a Wisconsin corporation and the other a New York corporation, evidenced by bonds registered in the names of his infant children (fol. 4).

These bonds "are not negotiable but are evidences that said debts were and are registered upon the books of the respective corporations" as aforesaid (*Ibid*).

By express mortgage provisions governing the ownership of the debts and to which reference is made in the several bonds "any transfer of the title to the said debts other than such transfer upon the books of the said corporations respectively in the City, County and State of New York is *invalid and void*" (fol. 5).

Since the year 1908, the bonds "*were and they still are* in a safe deposit box in the vault of the Safe Deposit and Trust Company of Baltimore" (*Ibid.*) where the appellant had placed them, "said box being rented and standing recorded on the books of the said Safe Deposit Company in the joint names of Messrs. Alexander Brown and Sons and the American Bonding Company" (*Ibid*). They were thus deposited by appellant in connection with a guardianship proceeding in the Orphans Court of Baltimore, which has since been declared illegal and void (*Ibid.*). For the purposes of such guardianship the appellant had agreed not to remove the bonds without the consent of the American Bonding Company as his surety on the guardian's bond which he had given in said void proceeding and had agreed "that said surety and said Alexander Brown and Sons should only have joint access to said bonds and the same for the sole purpose of enabling said Alexander Brown and Sons to remove interest warrants from said bonds during the said guardianship and forward the same to the City of New York as they became due" (*Ibid.*).

"In December 1909 the Court of Appeals of Maryland by a decree founded upon personal jurisdiction over all the parties to said guardianship proceeding, declared the said guardianship and certain releases given by your orator in connection therewith null and void; * * * neither said Bonding Company nor said Alexander Brown and Sons have

since said adjudication had any right of access to or other right or control whatsoever in, over or as to said safe deposit box and the contents of the same and said adjudication has established the lack of jnrisdiction over said property on the part of the courts which had so undertaken to deal therewith" (fol. 6).

(This adjudication is found in *DeBéarn* v. *Winans*, *111 Md., 434*).

Appellant "is entitled to the immediate possession of said evidences of debt * * * for the purpose of causing said debts to be transferred upon the books of the debtor corporations in the State of New York to the name of your orator or at his option of surrendering said bonds to the said corporations respectively in exchange for the issuance to your orator of other evidences of said debts to take the place of said bonds now so registered, as he would have done in the year 1908 but for the illegal guardianship proceeding already referred to" (*Ibid*).

Appellant "has been since the month of October, 1908, and still is *the true lessee* of said box, the rental of which has been paid with funds furnished by your orator and as above shown at all times owner of the contents thereof" (*Ibid.*) An agreement in writing between the appellant and the respondents Brown and Sons and American Bonding Company dated Baltimore, October 28th, 1908, is then set forth (fol. 7) showing upon its face that the connection of Brown and Sons and the Bonding Company with the box and its contents is restricted to the purposes of the guardianship proceeding held void by the Court of Appeals of Maryland in 1909.

The defendant Weiss, Sheriff of Baltimore, "has filed in the Superior Court of Baltimore, a court of law of the State of Maryland, returns to certain writs of attachment, stating that he has seized the aforesaid particular debts under such writs issued out of said court in five suits brought by divers non-residents of the State of Maryland against your orator; * * * your orator has not been served with

process in said suits; that said debts have not (been) and cannot be seized under said writs * * * (fol. 8); "Said Superior Court of Baltimore City has no personal jurisdiction over your orator and has not gained jurisdiction over the aforesaid box or its contents or over the debts owned by your orator in the State of New York" (*Ibid*). Immunity from the State court proceedings thus begun is claimed in the bill under the property clause of the Federal Constitution (*Ibid*). Upon these facts, the appellant, as his main relief in the suit, sought a decree declaring him to be "*the true lessee of said box* and entitled to secure access to the same and withdraw the contents thereof either in person or by his duly authorized representative" (fol. 9). He also prayed for an injunction restraining the Sheriff from any interference with the box and its contents, and "that pending this action he be so enjoined that this Court be not hindered in its jurisdiction over this cause" (*Ibid*). The bill concludes with a prayer for general relief.

Following a hearing upon demurrers filed by all the defeudants, the learned Court below sustained the demurrers and dismissed the bill as to all the defendants. This decision is stated to rest on two grounds: "want of jurisdiction" and "lack of indispensable parties, *i. e.*, the plaintiff in the attachment cases mentioned in the bill" (final decree, fol. 29). The opinion of the learned Judge below shows that in the last analysis, his decision rests on the ground that the appellant was not entitled to question the prior jurisdiction of the State court over the *res* in a suit brought in a federal court sitting in the same State.

Specification of Errors.

FIRST: The Court below erred in deciding that the jurisdiction of a State court is not open to inquiry in a Federal court sitting in the same State, and thereby deprived the appellant of rights under the Federal Constitution.

SECOND: The effect given by the Court below to State court proceedings which on the conceded facts are void *in rem* and *in personam* is repugnant to the Federal Constitution.

THIRD: It was error to hold, upon the admitted facts, that appellant was not entitled, as between himself and the appellees other than the Sheriff, to a decree construing the written agreement of Octo- 28th, 1908, in conjunction with the vacating of the guardianship proceeding, and declaring the appellant to be the true lessee of the safe deposit box.

FOURTH: It was error to hold that the rule set forth in Section 265 of the Federal Judiciary Act prevents the granting of relief against the Sheriff, upon the facts admitted by his demurrer.

FIFTH: It was error to hold the appellant not entitled to any relief against any of the appellees upon the facts set forth in the bill.

POINT I.

Appellant was entitled to show in the Federal court below that a State court sitting in the same State had not acquired jurisdiction of the bonds although the Sheriff had filed a return stating that they had been seized.

The facts admitted by the demurrer establish that the status of the safe deposit box and its contents has not been disturbed since the box was rented and the bonds placed in it by the appellant; that while writs of attachment have been issued out of a State court of law, and returns filed thereunder that

the bonds had been seized, the bonds have not in fact been seized; that the appellant had not been served in person with process and that the State court had not acquired jurisdiction over him or his property.

The learned judge below deemed himself precluded from inquiring into the jurisdiction of the State court, and this led him to disregard the facts admitted by the demurrer showing lack of any jurisdiction in the State court over the bonds. This was plainly error.

Cooper v. *Newell*, *173 U. S.*, *555*.

> "1. When a judgment of a state comes "under consideration in a court of the United "States sitting in the same state, the ques- "tion of jurisdiction of the state court to "render the judgment is open to inquiry in "the United States court (Syllabus).
>
> "2. In such case, evidence is admissible to "contradict the recital in the judgment that "defendant was a citizen and resident of the "state, and to show that he was not served "with process and that the attorney who "appeared for him had no authority to rep- "resent him" (*Ibid*).
>
> "This evidence (that process had not been "served as recited in the State Court judg- "ment) was objected to on the ground that "the judgment was rendered by a domestic "court of general jurisdiction, and that want "of jurisdiction cannot be established *aliunde* "the record in a collateral proceeding (at "p. 566). But the courts of the United States "are tribunals of a different sovereignty, and "exercise a distinct and independent juris- "diction from that exercised by the state "courts, and this is true in respect of the "courts of the several states as between each "other. And the courts of the United States "are bound to give to the judgments of the "state courts the same faith and credit that "the courts of one state are bound to give to "the judgments of the courts of her sister "states.
>
> "The same rule applies to each, *and the* "*question of jurisdiction is open to inquiry*

" *even when the judgment of the Court of a* " *State comes under consideration in a court* " *of the United States, sitting in the same* " *State.* Christmas *v.* Russell, 5 Wall., 290 " (18-475); Galpin *v.* Page, 18 Wall., 350 " (21-959); Pennoyer *v.* Neff, 95 U. S., 714 " (24-565); Hart *v.* Sansom, 110 U. S., 151 " (28-101); Goldey *v.* Morning News, 156 " U. S., 518 (39-517)" (at pp. 566-7).

POINT II.

Upon the conceded facts the State Court had not acquired prior jurisdiction over the bonds.

(*a*) It is conceded that the bonds " are not negotiable, and are registered upon the books of the respective corporations " (fol. 4) in the names of the appellant's infant children, subject to express provisions whereby any transfer of the bonds otherwise than upon the books of the corporations in New York is " illegal and void " (fol. 5). This special status of the bonds differentiates them from the class of securities called " negotiable bonds " or " bearer bonds " title to which passes by manual delivery, practically like money. The securities dealt with here for the purposes of transfer of the title of the property of which they are the evidences, are exactly analogous to certificates of stock. Like the latter, they serve to establish an ownership recorded in corporate books, and only transferable thereon by the owner or his duly authorized attorney. Any transfer otherwise than upon the books of the corporation is expressly agreed to be " invalid and void."

" Bonds and debentures which are not negotiable instruments are merely choses in action, not assignable at law " (Jones on Corporate Bonds and Mortgages, § 194).

It follows that the mere presence of the bonds in

Maryland did not subject the property of which they are the evidences to process of attachment in that State. Something more would be required, such as the presence of the owner in the State or a pledge of them in the hands of one holding an assignment of the bonds as collateral security or their deposit in the hands of a trustee within the jurisdiction vested with power of sale. The fact that such bonds are locked up in a safe deposit box in a State in which no one with power to sell the owner's title can be found is not of itself sufficient to give the courts of the State jurisdiction to proceed against them by attachment.

In *Bates* v. *N. O. J. & G. N. R. Co.*, *4 Abb. Pr.*, *72; 13 How. Pr.*, *516*, it was held that the mere presence of foreign registered coupon bonds in New York did not give the courts of that State jurisdiction to subject them to attachment proceedings.

Smith v. *Kennebec & P. R. Co.*, *45 Me.*, *547*.

Bowker v. *Hill*, *60 Me.*, *172*,

are to the same effect

In *Buck* v. *Beach*, *206 U. S.*, *392*, this Court has decided that the mere presence in the State of Indiana of non-negotiable notes and the mortgages securing them, kept in a safe by a local agent of the non-resident owner, the debtors on the notes being likewise non-residents, would not "make that property within the State which we think is clearly outside of it" (p. 407); that although the notes could have been the object of larceny in Indiana, they could not, by "due process of law," be condemned and sold in the State.

See also *Tweedy* v. *Bogart*, *56 Conn.*, *15*.

Ward v. *Boyce*, *152 N. Y.*, *191*.

In *Simpson* v. *Jersey City Contracting Company*, *165 N. Y.*, *193*, the highest Court of New York decided that the "reversionary interest" of a non-resident pledgeor of stock of a foreign corporation

who had delivered to the pledgee, with the stock certificate, an assignment of the shares represented by it with power to transfer them on the books of the corporation, could be attached by service of process upon the resident pledgee.

No such "reversionary interest" or its equivalent can be found in the State of Maryland in the case at bar. It surely cannot be found in the "right of access" of Brown and Sons and the American Bonding Company for the purpose of clipping coupons under an agreement which was rescinded as the result of the setting aside of the guardianship proceeding which led the appellant to grant such right of access. It is not clear how such agency could be availed of to transfer the title to the bonds. No other agency is claimed to exist in the State to achieve that purpose.

(*b*) But treating the bonds as capable of transfer by manual delivery it is manifest upon the conceded facts that they have not been subjected to such proceedings as would bring them within the jurisdiction of the State court. They have not been seized, and a return filed in the State court, describing them as seized is admittedly false; they are still where the appellant placed them, and the sheriff has had no access to them. Being the true lessee of that box in which they are, the agency granting access thereto to certain of the appellees having terminated, the appellant alone or his duly authorized attorney can lawfully obtain such access. There is thus no one in Maryland vested with lawful authority to open the box and take its contents.

Such being the situation, how could attachment proceedings lawfully subject the bonds to the process of the State of Maryland? The safe deposit company is a mere landlord; it has nothing in its custody and merely controls the right of access to the boxes and safes which it rents. The American Bonding Company and Brown and Sons admit that they are not the true lessees of the box although it was rented in

their joint names; they admit that the appellant is the true lessee; that the rent of the box has been paid with funds furnished by him, and that they have ceased to have any rights whatever of access or otherwise as to the box or its contents. Obviously they have no lawful authority to deal with the box and its contents, and any interference on their part with the same would involve them in liability as trustees *de leur tord* of the appellant. A decree granting the first prayer of the bill would relieve them of any liability in the premises.

Thus, treating the bonds as property capable of transfer by manual delivery, it is nevertheless clear that as they were not seized, the State Court did not gain jurisdiction over them.

In *Cooper* v. *Reynolds, 10 Wall, 308*, it is said:

> "Jurisdiction of the person is obtained by "the service of process, or by the voluntary "appearance of the party in the progress of "the cause.
>
> "*Jurisdiction of the res is obtained by a "seizure under process of the court, whereby "it is held to abide such order as the Court "may make concerning it*" (19 L. Ed., at p. 932).

In *Pelham* v. *Rose, 9 Wall., 103*, it appeared that the "marshal did not, in obedience to the writ of monition, attach the note therein described, nor seize the same by himself or deputy; that the note was not even within sight of the marshal, or of any of his deputies," etc.

Mr. Justice Field, writing the opinion of the Court from which the above extract is taken, said:

> "The seizure of the property as thus seen, is "made the foundation of the subsequent pro- "ceedings. It is essential to give jurisdiction "to the Court to decree a forfeiture. *Now by "the seizure of a thing is meant the taking of a "thing into possession*, the manner of which "and whether actual or constructive depend- "ing upon the nature of the thing seized. *As "apptied to subjects capable of manual deliv-*

> " *ery, the term means caption, the physical* " *taking into custody. In the case at bar a* " *visible thing capable of physical possession* " *is the subject of the libel. It is the promis* " *sory note of Pelham which constitutes the* " *res against which the proceeding is insti-* " *tuted* and not 'a credit 'debt, which the note " is supposed by the defendants' counsel to " represent " (19 L. E., 603–4).

The same case came up again to this Court under the title of *Pelham* v. *Way, 15 Wall., 196*, and on the same question this Court in an opinion delivered by Mr. Justice Strong said:

> " But the question here is whether the debt " was seized, or whether the subject of the " seizure and the consequent libel, was only an " evidence of the debt, a thing capable of actual " manipulation and delivery. That is was the " latter an inspection of the record and the deci- " sion of this court in Pelham *v.* Rose, 9 Wall., " 103, sufficiently establish. The libel was " against a promissory note, particularly de- " scribing it, and it was that, not the debt of " which it was evidence, that was claimed to " have been forfeited. The monition was " against the promissory note, and nothing " else * * *. For this reason it was held " that *to effect its seizure, it was necessary* " *for the marshal to take the note into his ac-* " *tual custody and control.* That case (Pel- " ham *v.* Rose) determined that *the arrest re-* " *turned by the marshal was not a seizure of* " *the debt and consequently the debt was not* " *confiscated* " (21 L. E., 57).

It is manifest that no lien was acquired by a "seizure" which consisted merely in the filing of a return in the State court without caption of the bonds or anything amounting to physical taking into custody. Such physical taking is precisely what is conveyed by a return that the bonds have been seized, and, as admittedly the bonds had not been seized, it follows that the State court proceedings did not have the effect of creating rights in

favor of the plaintiffs in the attachment cases which the Federal court was bound to recognize and protect. Indeed, upon the admitted facts the Federal court was bound to treat as void State court proceedings lacking the fundamental basis of jurisdiction.

Pennoyer vs. *Neff*, *95 U. S.*, *714*, *730*.

POINT III.

The Federal court having acquired prior jurisdiction by process served *in personam* on the lessor and on the nominal lessees of the box as parties defendant in an original suit to determine the status of the leasehold of the safe deposit box should protect its jurisdiction to render a decree by preventing interference with the *res*.

It is a familiar rule that the prohibition now contained in Section 265 of the Judiciary Act against interference by a Federal court with State court proceedings does not prevent a Federal court which has first acquired jurisdiction of the *res* from preventing interference therewith pending a determination of the suit; and whenever necessary to enjoin such interference. In the case at bar the Sheriff was made a party defendant and injunctive relief properly prayed for against him because by the filing of a false and void return he had certified to the seizure of bonds which he had not in fact seized; and these bonds being contained in the box, the leasehold of which is the primary subject-matter of this suit, it was necessary for the protection of the true lessee as well as for that of the lessor and nominal lessees of the box that the

determination should include an adjudication concerning the falsity of the return filed by the Sheriff concerning the contents of the box. Thus relief was applied for only against State court proceedings shown to be invalid by the admitted facts, and such relief the Federal court had the power and duty to grant as an incident to its jurisdiction over the subject-matter of the action.

That priority of jurisdiction as between a Federal and a State court confers exclusiveness of jurisdiction upon the court which first acquired dominion over the subject-matter and that the question of priority should be determined in the Federal court subject to review in the supreme tribunal of the nation has long been settled:

Freeman vs. *Howe et al.*, *24 How.*, *450-461.*

Syllabus:

(1) " In the case of conflicting authorities " under a state and federal process, on which " property has been seized, the question as to " which authority shall for the time prevail, " does not depend upon the rights of the " respective parties to the property seized, " but upon the question, which jurisdiction " had first attached by the seizure and custody " of the property under its process.

(4) " It belongs to the federal courts to " determine the question of their own jurisdic- " tion, the ultimate arbiter being the supreme " judicial tribunal of the nation " (16 L. E., 749).

Opinion by Nelson, *J.*:

" But it is claimed that the process of at- " tachment issued by a common law court " stands upon a different footing, and the " reasons assigned for the distinction are, " that in the one case the property seized is " the subject of legal inquiry in this court, " the matter to be tried and adjudicated upon, " and which, in the language of the counsel, " lies at the foundation of the jurisdiction of " the court; but that, in the other, the prop- " erty seized, namely: under the attachment,

" is not the subject-matter to be tried, like
" the property which is the subject of a libel
" *in rem*, as the process is simply, for the re-
" covery of a debt, without any lien or charge
" upon the property is a collateral one, which
" the federal court could not hear and decide
" in the action before it; and further, that the
" question of liability of the Railroad Com-
" pany was upon certain bonds, the trial and
" judgment upon which would not be affected
" by the possession or want of possession of
" the property seized by the Marshal.
" * * * The court is not aware of any
" such distinction " (16 L. E., 751).
" We regard the question as settled, at
" least as early as United States *v.* Peters,
" 5 Cranch, 115, familiarly known as The
" Olmstead case, and which is historical, that
" it belongs to the federal courts to determine
" the question of their own jurisdiction, the
" ultimate arbiter, the supreme judicial tri-
" bunal of the nation, and which has been
" recently reaffirmed, after the most careful
" and deliberate consideration, in the opinion
" of the present Chief Justice, in the case of
" The United States *v.* Booth, 21 How., 506"
(16 L. E. 752).

The principle has been reaffirmed in recent decisions of this Court:

Ricker Land, &c., Cattle Co. v. *Miller & Lux*, *218 U. S., 258.*
Helm v. *Zarecor*, *222 U. S., 32.*

Conclusion.

The appellant is deprived of his property by a decree giving effect to State court proceedings which are not supported by jurisdiction acquired either *in rem* or *in personam* according to the settled rules of jurisprudence and which, under the decisions of this Court, do not constitute " due process of law."

Respectfully submitted,

MAURICE LÉON,
Attorney for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 301.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, COUNT AND PRINCE OF BEARN AND CHALAIS,

PLAINTIFF IN ERROR,

Against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN BONDING COMPANY OF BALTIMORE, ALEXANDER BROWN & SONS, AND THEODORE P. WEIS, SHERIFF OF BALTIMORE CITY.

Appeal from District Court of United States for the District of Maryland.

Brief for Defendants, Safe Deposit and Trust Company of Baltimore, Alexander Brown & Sons, and American Bonding Company of Baltimore.

HISTORY OF THE DE BEARN LITIGATION.

The plaintiff had received under the distribution of his wife's estate one-third thereof in his own right and two-thirds thereof as guardian of his two infant children. The

two-thirds consisted principally of railroad bonds registered in the name of his infant children, these bonds having been deposited in a safe deposit box of the Safe Deposit and Trust Company, one of the defendants herein, under the terms of a letter of October 28th, 1908, appearing on page 4 of the Record. Thereafter the plaintiff filed a bill in the equity court of Baltimore City praying for the setting aside of this distribution. The lower Court by its decree dismissed the bill, but this decree was reversed by the decree of the Court of Appeals of Maryland, December 3rd, 1909 (111 Md. 434). At or about this latter date these bonds were attached by creditors of the plaintiff in suits instituted by them in the Superior Court of Baltimore City. On December 28th, 1909, and January 29th, 1910, these attaching creditors filed a petition asking leave to intervene in the equity case, praying that no order be passed permitting the delivery of the bonds to the plaintiff, or their removal out of the jurisdiction of the Court. On February 4th, 1910, the plaintiff united with these attaching creditors and filed a petition in the equity case, alleging that the attachment cases had been settled, and prayed that the American Bonding Company and Alexander Brown & Sons be made parties to the equity case, and that subpœnas be directed to them. Thereafter subpœnas were issued and served as prayed, and in pursuance thereof the American Bonding Company and Alexander Brown & Sons filed their answers setting up the attachment proceedings and the circumstances under which the bonds were held. On May 21, 1910, an order was passed in the equity case dismissing the last-mentioned petition. This was done at the instance of the plaintiff, who alleged that no settlement of the attachment cases had been made. The effect of this order was to remove the American Bonding Company of Baltimore and Alexander Brown & Sons as parties to the equity case. On June 4th, 1910, the plaintiff by petition filed in the equity case, prayed that a decree

should be passed in accordance with the aforesaid decree of the Court of Appeals of December 3rd, 1910, and the mandate sent down in pursuance thereof, and he attached to said petition a draft of the decree which he desired. One of the provisions of this draft was that the Clerk of the Court was to be directed to make and execute such instruments relating to these bonds, as should be requisite to effect a transfer of the registration of the bonds from the infants to bearer, and to deliver such bonds to the plaintiff or his attorney, notwithstanding the fact that the American Bonding Company and Alexander Brown & Sons were no longer parties to said equity case, and notwithstanding the fact that the attachment cases were outstanding.

It suffices to say that the decree of the lower Court passed June 6th, 1910, was not in accordance with said draft. From the decree, however, so passed, the plaintiff appealed again to the Court of Appeals. This appeal is reported in 115 Md. 139, the decision being rendered April 5th, 1911.

The Court of Appeals reversed the decree and held that when the case was remanded, the decree to be passed should provide for a cancellation of the registration of the bonds in such manner as the lower Court should deem proper, and that if it deemed it necessary, it should make the Safe Deposit and Trust Company, American Bonding Company and Alexander Brown & Sons parties to the equity case, and it should further provide that such cancellation should in no wise affect the rights of attaching creditors.

On May 9th, 1911 (see Record, page 1, this Court, October Term, 1913, No. 557), Mr. Bernard Carter, who was attorney for certain of the parties in the equity case, and the firm of Barton, Wilmer, Ambler & Stewart, who were attorneys at one time for the plaintiff, joined with the attaching creditors, in the filing of a petition in the equity case, praying for the cancellation of the registration of the bonds, and that the American Bonding Company and Alexander Brown & Sons be made parties to the equity case. In pursuance of

this petition subpœna was issued as prayed and served on the American Bonding Company and Alexander Brown & Sons (Record, page 6, No. 557). The American Bonding Company and Alexander Brown & Sons in due time appeared and answered (R. No. 557, pages 8, 11). Mr. Carter afterwards withdrew from this petition (R. No. 557, page 14); but on April 13th, 1912, he together with Ross R Winans filed their petition in the equity case, praying among other things that a subpœna be issued to American Bonding Company and Alexander Brown & Sons (R. 557, p. 18), subpœna was issued and served, and these parties in due time answered this petition (R. No. 557, pp. 22-23). The plaintiff on May 24th, 1912, also answered this petition (R. No. 557, p. 26), setting up among other things that on the 16th of April, 1912, he had filed in the United States District Court for the District of Maryland the bill of complaint in this present appeal (R. No. 557, p. 29).

On June 7th, 1912, the plaintiff by his petition (R. No. 557, p. 30) again submitted a draft for a final decree in said equity case.

On June 10th, 1912, the attaching creditors filed in said equity case certified copies of the judgments which they had obtained (Record No. 557, pages 42 to 46).

These judgments were obtained on the 28th day of May, 1912. They are judgments of condemnation against the bonds and aggregate about $60,000.

It suffices to say here that these attachment cases have been twice before the Court of Appeals of Maryalnd (115 Md. 668, 119 Md. 418), and the judgments of condemnation affirmed. They have also been twice before this Court on writ of error and the writ dismissed on motion (225 U. S. 695, Record Nos. 558-561, October Term, 1913).

On June 10th, 1912, the lower Court in the equity case passed another decree (R. No. 557, p. 48). By this decree a Trustee is appointed and the American Bonding Company

and Alexander Brown & Sons are ordered and decreed to transfer and assign to the Trustee the safe deposit box containing said bonds, and the Trustee is ordered and adjudged to execute such papers in the names of the infants necessary to make the bonds payable to bearer. An appeal was taken from this decree by the plaintiff to the Court of Appeals of Maryland. The case is reported in 119 Md. 390. Opinion was rendered January 15, 1913. The Court of Appeals for certain reasons not necessary to mention here reversed the decree, but holds that the decree in so far as it appointed a Trustee to take possession of the bonds and cancel the registration is valid. By reason of the holding of the Court of Appeals of Maryland the plaintiff sued out a writ of error to this Court. The Record in this case is the above-mentioned Record No. 557, October Term, 1913, and there was filed therein a motion to dismiss, which was granted March 9th, 1914. Two of these defendants filed a brief in said case in opposition to said motion, and they also filed a brief in opposition to dismissing the writ of error to this Court in the attachment cases.

THE BILL IN THIS CASE.

The bill was filed April 16th 1912, and on that day the writ of subpœna was served on the defendants to appear on the first Tuesday in May. Thereafter, as above pointed out, the plaintiff on May 24th, 1912, appeared in the equity case, filed his answer to the petition of Carter and Winans, and attached to said answer a copy of said bill.

The bill alleges, among other things, that the plaintiff is the owner of certain bonds of the face value of $185,000, all being registered in the name of one or the other of his infant children; that some of them are bonds of a Wisconsin Railway corporation, and some of a New York Railway cor-

poration; that under the mortgages securing said bonds they are only transferable on the books of said corporations in New York; that said bonds are in a box of the Safe Deposit and Trust Company, standing in the joint names of Alexander Brown & Sons and American Bonding Company of Baltimore; that since the decision of the Court of Appeals of Maryland in December, 1909, awarding the plaintiff ownership of said bonds, neither Alexander Brown & Sons nor the American Bonding Company have had any right of access to said box; that neither the Bonding Company nor Brown & Sons make any claim to said box or its contents antagonistic to the plaintiff; but the plaintiff is unable to secure access to said box, or to withdraw its contents, except by the aid of a Court of Equity, and that such a decree is necessary to protect the Safe Deposit & Trust Company as landlord; that the defendant, Sheriff, has filed in the Superior Court of Baltimore City returns to certain writs of attachment, stating that he has seized said bonds, and the plaintiff alleges that said attachment proceedings are void.

The bill prays for a decree determining that the plaintiff is entitled to access to said box and to withdraw its contents, and that the Sheriff be enjoined from interfering with said box and its contents. The defendants in due course appeared and demurred to the bill for the following reasons:

(1) From the plaintiff's own showing he is not entitled to relief;

(2) That the bill shows that there are other parties who are necessary parties;

(3) The bonds are in the possession and under the control of the Superior Court of Baltimore City.

The lower Court sustained the demurrer and dismissed the bill, as the plaintiff elected not to amend.

ARGUMENT.

It appears from the above statement that at the time of the filing of the bill these bonds were all subject to several attachments, issued out of the Superior Court of Baltimore City in suits instituted against the plaintiff by his creditors; that shortly after filing the bill judgments were rendered in these attachment suits, condemning these bonds, and that said judgments are now final.

There are two cardinal principles in law which apply to this case and render the bill demurrable: One, that indispensable parties to a decree (in this case the attaching creditors) must be made parties;

Foster, Fed. Pr. (4th Ed.), sections 53, 60;

the other, that where a State Court has first acquired jurisdiction, the United States Court will not act.

1 Foster, Fed. Pr. (4th Ed.), section 9.

These questions have been so fully discussed in the opinion of the lower Court (Record, page 12) that argument here is unnecessary.

Respectfully submitted,

ALBERT C. RITCHIE,
Solicitor for Alexander Brown & Sons.

EDWARD DUFFY,
Solicitor for American Bonding Company of Baltimore.

CHARLES McH. HOWARD,
Solicitor for Safe Deposit & Trust Co. of Baltimore.

DE BEARN *v.* SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

No. 301. Argued March 17, 18, 1914.—Decided April 6, 1914.

This court takes judicial notice of its own records; and, if not *res judicata*, may, on the principles of *stare decisis*, examine and consider decisions in former cases affecting the consideration of one under advisement, *Bienville Water Supply Co.* v. *Mobile*, 186 U. S. 212. It may take judicial notice of its own records in regard to proceedings formerly had by a party to a proceeding before it. *Dimmick* v. *Tompkins*, 194 U. S. 194.

It appearing from the records of this court that the constitutional questions alleged as the sole basis for a direct review of the judgment of the District Court, have been heretofore decided to be so wanting in merit as not to afford ground for jurisdiction, the appeal in this case is dismissed.

It is in the interest of the Republic that litigation should come to an end.

In this case the state court has sustained attachments as authorized by state law.

It is within the power of the State to authorize a foreign creditor to attach bonds within the State deposited under directions of the state court in the exercise of its lawful powers, and which cannot be removed from the State without the authority of the state court.

Even though such bonds may have been registered by a prior order of the state court, it may be the duty of that court under the state law to remove such registry in order to protect attaching creditors.

An owner of bonds deposited in a safe deposit vault under an order of the state court, *held*, in this case, not to have been deprived of his property without due process of law by the attachment of such bonds under process issued by the state court in accordance with the law of the State as determined by its highest court.

THE facts, which involve the jurisdiction of this court of direct appeals from the District Court on constitutional questions, are stated in the opinion.

Mr. George C. Holt and *Mr. Maurice Leon* for appellant:

Appellant was entitled to show in the Federal court below that a state court sitting in the same State had not acquired jurisdiction of the bonds although the sheriff had filed a return stating that they had been seized. *Cooper* v. *Newell*, 173 U. S. 555.

Upon the conceded facts the state court had not acquired prior jurisdiction over the bonds. *Bates* v. *N. O., J. & G. N. R. Co.*, 4 Abb. Pr. 72; *S. C.*, 13 How. Pr. 516; *Smith* v. *Kennebec &c. Co.*, 45 Maine, 547; *Bowker* v. *Hill*, 60 Maine, 172; *Buck* v. *Beach*, 206 U. S. 392; *Tweedy* v. *Bogart*, 56 Connecticut, 15; *Ward* v. *Boyce*, 152 N. Y. 191; *Simpson* v. *Jersey City Contracting Co.*, 165 N. Y. 193.

Treating the bonds as property capable of transfer by manual delivery, it is nevertheless clear that as they were not seized, the state court did not gain jurisdiction over them. *Cooper* v. *Reynolds*, 10 Wall. 308; *Pelham* v. *Rose*, 9 Wall. 103.

No lien was acquired by a seizure which consisted merely in the filing of a return in the state court without caption of the bonds or anything amounting to physical taking into custody. *Pennoyer* v. *Neff*, 95 U. S. 714, 730.

The Federal court, having acquired prior jurisdiction by process served *in personam* on the lessor and on the nominal lessees of the box as parties defendant in an original suit to determine the status of the leasehold of the safe deposit box should protect its jurisdiction to render a decree by preventing interference with the *res*. Section 265, Judicial Code; *Freeman* v. *Howe*, 24 How. 450, 461; *Ricker Land Co.* v. *Miller & Lux*, 218 U. S. 258; *Helm* v. *Zarecor*, 222 U. S. 32.

The appellant is deprived of his property by a decree giving effect to state court proceedings which are not supported by jurisdiction acquired either *in rem* or *in personam* according to the settled rules of jurisprudence and which, under the decisions of this court, do not constitute "due process of law."

Mr. Charles McH. Howard, with whom *Mr. Albert C. Ritchie* and *Mr. Edward Duffy* were on the brief, for appellees:

At the time of the filing of the bill these bonds were all subject to several attachments, issued out of the Superior Court of Baltimore City in suits instituted against the plaintiff by his creditors; shortly after filing the bill in this case judgments were rendered in those attachment suits, condemning these bonds. Those judgments are now final.

There are two cardinal principles in law which apply to this case and render the bill demurrable: One, that indispensable parties to a decree (in this case the attaching creditors) must be made parties; Foster, Fed. Pr. (4th ed.), §§ 53, 60; the other, that where a state court has first acquired jurisdiction, the United States court will not act. *Id.*, § 9.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

In this case the court below sustained a demurrer to the complaint and this direct appeal was then taken on the theory that rights under the Constitution of the United States were involved. To determine whether there is a constitutional question, and, if so, to decide it, requires a statement of the averments of the complaint.

The complainant was the appellant and the defendants were the Safe Deposit & Trust Company of Baltimore, American Bonding Company of Baltimore, Alexander Brown & Sons, a commercial firm established in Baltimore and Theodore P. Weis, sheriff of the city of Baltimore. It was alleged that the complainant was the owner of coupon bonds of $29,000 issued by the New York Central & Hudson River R. R. and of $156,000 of bonds issued by the Chicago, St. Paul, Minneapolis & Omaha Railway Com-

pany, a specified amount of the bonds being registered in the name of a minor son and a stated amount being likewise registered in the name of a minor daughter of the complainant. It was averred that the bonds were in a safe deposit box in the vault of the defendant Safe Deposit & Trust Company, "where your orator, by means of a guardianship proceeding in the Orphans' Court of Baltimore which has since been declared illegal and void, was induced to place said bonds, said box being rented and standing recorded on the books of the said safe deposit Company in the joint names of Messrs. Alexander Brown & Sons and the American Bonding Company; that for the purposes of such guardianship proceeding your orator had in the year 1908 been required by the said American Bonding Company as surety on your orator's bond in said guardianship proceeding to agree not to remove the said bonds without the consent of said surety; and had further been required by said surety to consent that said surety and said Alexander Brown and Sons should only have joint access to said bonds and the same for the sole purpose of enabling said Alexander Brown and Sons to remove interest warrants from said bonds during the said guardianship and forward the same for payment to the City of New York as they became due.

"That in December 1909, the Court of Appeals of Maryland by a decree founded upon personal jurisdiction over all the parties to said guardianship proceeding declared the said guardianship and certain releases given by your orator in connection therewith null and void; that by said adjudication, the said suretyship of the said American Bonding Company of Baltimore was extinguished and that neither said Bonding Company nor said Alexander Brown and Sons have since said adjudication had any right of access to or other right or control whatsoever in, over or as to said safe deposit box and the contents of the same and said adjudication has established the

lack of jurisdiction over said property on the part of the Courts which had so undertaken to deal therewith.

"That your orator is entitled to the immediate possession of the said evidences of debt, to wit: registered bonds for all purposes and is in urgent need of them for the purpose of causing said debts to be transferred upon the books of the debtor corporations in the State of New York to the name of your orator or at his option of surrendering said bonds to the said corporations respectively in exchange for the issuance to your orator of other evidences of said debts, to take the place of said bonds now so registered, as he would have done in the year 1908 but for the illegal guardianship proceeding already referred to.

"That your orator has been since the month of October 1908, and still is the true lessee of said box the rental of which has been paid with funds furnished by your orator and as above shown at all times owner of the contents thereof; that said Alexander Brown and Sons have not been and are not in any manner responsible either for said box or for the custody of the contents of the same or in or for any matter growing out of the arrangement under which said box was rented and said registered bonds placed therein; that as to the American Bonding Company, it has had no connection with or interest in the rental of said box or the custody of the contents of the same except as surety of your orator upon his bond as guardian, which said suretyship was undertaken in the aforesaid illegal guardianship proceeding which has been declared void and set aside."

After reciting the provisions of a memorandum agreement between the plaintiff and defendant Brown & Sons and the Bonding Company by which the joint access to the box in which the bonds were deposited should be had for the purpose of cutting the coupons from the bonds and turning them over to the complainant, it was averred that neither the American Bonding Company nor Brown &

Sons set up any interest antagonistic to the complainant but that he was unable to get access to the box where the bonds were deposited without a decree authorizing him to do so and that such a decree was necessary for the protection of Brown and Sons and the Safe Deposit & Trust Company. It was then averred that the defendant sheriff of Baltimore County "has filed in the Superior Court of Baltimore, a Court of law of the State of Maryland, returns to certain writs of attachment stating that he has seized the aforesaid particular debts under such writs issued out of said Court in five suits brought by divers non-residents of the State of Maryland against your orator upon the ground of your orator's non-residence in said State to recover upon divers claims alleged to have arisen out of said State; that the said proceedings of the said defendant Sheriff under said writs purporting under color of the attachment statutes of Maryland and of said writs to seize said debts which are owned by your orator in the State of New York, are illegal and void; that your orator has not been personally served with process in said suits; that said debts have not and cannot be seized under said writs not being property in the State of Maryland; that the defendant sheriff by his said proceedings under said writs has attempted and is attempting to interfere with said box and its contents and to encumber your orator's title to said particular debts and has sought and is seeking to deprive your orator of his property and of the effective control thereof and of the use thereof without due process of law and to deprive your orator of the equal protection of the laws in violation of the Constitution of the United States and particularly of Section I of the fourteenth amendment thereto; that said Superior Court of Baltimore City has no personal jurisdiction over your orator and has not gained jurisdiction over the aforesaid box or its contents or over the debts owned by your orator in the State of New York, and the said defendant Sheriff

has no lawful authority to impede or seek to impede or hinder your orator in the premises nor to do any act tending to defeat your orator's control of the said debts or the evidences thereof or to prevent your orator from securing the relief applied for herein, and which this Court has jurisdiction to grant your orator, and that the said unlawful proceedings of the said Sheriff under color of said writs will, if persisted in, constitute an unlawful interference with the jurisdiction of this Court in the premises."

The prayer was that the complainant be decreed to be the lessee of the safe deposit box and entitled to access to the same and to withdraw the contents and that the sheriff be enjoined from in any way interfering with the accomplishment of these results.

The demurrers which were filed to this bill by the respective defendants were based first upon the absence of necessary parties, that is, those in whose behalf the attachments had been issued as referred to in the bill and second because, as the bill disclosed that the bonds referred to in the bill were under levy by attachment issued out of the state court, there was no power in the United States court to interfere. The court below rested its decree sustaining the demurrer and dismissing the bill on both these grounds. In disposing of the latter the court said: "This Court may not take anything, be it safe deposit boxes, bonds, evidences of debt or what not, out of the custody of a state Court. The complainant does not question the general rule. He claims that it is not here applicable. He says that while the Superior Court has jurisdiction to issue writs of non-resident attachment, the things which its officer has sought to attach in this case are not attachable. It follows, he argues, that this Court may and must when properly applied to altogether ignore such void proceedings.

"The Court of Appeals of Maryland has expressly de-

cided that a Court of Equity may not assume to declare such attachments altogether nugatory. *de Bearn* v. *Winans*, 115 Maryland, 139.

"See also: *de Bearn* v. *Winans*, 115 Maryland, 604; *de Bearn* v. *de Bearn*, 115 Maryland, 668; *de Bearn* v. *de Bearn*, 115 Maryland, 685.

"It was there decided that such evidences of debt or bonds as are involved in the pending case may be attached in Maryland.

"Neither the Superior Court of Baltimore City nor this Court have any control over the other. If it should be here held that the things in question were not attachable, that Court would be under no obligation to subordinate its judgment to that of this Court. A conflict of jurisdiction would follow. The rule that one Court of concurrent jurisdiction may not attempt to exercise control over anything which has previously come into and still is in the control of the other Court is intended to render such unseemly controversies impossible. The facts of this case bring it within both the letter and spirit of that rule."

After further pointing out that ample remedy would be afforded the complainant by asserting his constitutional rights, if any, in the state court where the attachments were pending, and, if such Federal rights were denied, by prosecuting error to this court, the court observed: "Technically, as this is a hearing upon demurrer, this Court may not be entitled to take judicial notice of the fact that to all the cases in 111 and 115 Maryland cited in this opinion the complainant was a party. The conclusions herein stated have been reached, therefore, without considering whether the question as to whether a court of equity may interfere with these attachment proceedings and whether the evidences of debt are under the circumstances of this case attachable have been decided contrary to the contention of the complainant in a case to which he was a party and which had reference to the very attach-

ment proceedings which he seeks here to have declared invalid."

We are not constrained by the limitations which the lower court considered prevented it from taking notice of the judicial proceedings in the courts of Maryland in which the attachments issued. We say this because, as was declared in *Bienville Water Supply Company* v. *Mobile*, 186 U. S. 212, 217: "We take judicial notice of our own records, and, if not *res judicata*, we may, on the principle of *stare decisis*, rightfully examine and consider the decision in the former case as affecting the consideration of this;" and again, as further declared in *Dimmick* v. *Tompkins*, 194 U. S. 540, 548: "The court has the right to examine its own records and take judicial notice thereof in regard to proceedings formerly had therein by one of the parties to the proceedings now before it." Availing of this power and making reference to the records of this court, it appears that the controversy as to the validity of the attachments with which the appeal before us is concerned has on three different occasions been here considered. *de Bearn* v. *de Bearn*, 225 U. S. 695; *de Bearn* v. *de Bearn*, 231 U. S. 741; *de Bearn* v. *Winans*, 232 U. S. 719. In the first, an attempt to bring a controversy on the subject here was dismissed because of its prematurity. In the other two cases it appears that at the time the bill in this case was filed, the complainant was engaged in litigating in the courts of the State of Maryland the very grounds of opposition to the attachments which were made the basis of the bill in this case and that after filing such bill he continued such litigation in the state courts, and when, after a full consideration of his grounds of complaint, both state and Federal in the court of last resort of Maryland there were decisions against him, error was prosecuted from this court because of the asserted existence of the Federal rights which were alleged in the bill now before us. The records disclose that in both cases motions to dismiss

for want of jurisdiction were sustained by *per curiam* opinions, reference being made in the one case (231 U. S. 741) to authorities upholding the doctrine that no power to review exists in a case where although there is a Federal question, the conclusion of the court below rests upon a non-Federal or state ground completely adequate to sustain it, and in the other case (232 U. S. 719) the motion to dismiss was sustained by authorities to the same effect and additionally upon authorities establishing the rule that a wholly frivolous and unsubstantial Federal question was not adequate to give jurisdiction.

Indeed, the record in the case last cited establishes that in that proceeding the appellant filed a pleading in which he expressly set up the pendency of the bill in the United States court which is now before us and urged the supposed Federal rights upon which the bill was rested as a basis for relief.

From these considerations it obviously comes to pass that the supposed constitutional questions upon which our right to directly review the action of the court below can alone rest, have been already here twice decided to be so wanting in merit as not to afford ground for jurisdiction. It is true that the cases referred to involved the jurisdiction to review the judgments of the court of last resort of the State of Maryland under § 237 of the Judicial Code, but that difference affords no reason for distinguishing this case from the previous cases, since it is impossible to conceive that the assertion of an alleged constitutional right which was decided to be so unsubstantial and frivolous as to afford no ground to review the action of the state court of Maryland concerning the attachments should yet now be held to be of sufficient merit to give jurisdiction to directly review the action of the court below in refusing to interfere with the same attachments. Applying the previous cases, therefore, it plainly follows that we have no jurisdiction on this writ of error, and therefore

our duty is to dismiss. Before, however, discharging that duty without going into the labyrinth of pleadings, of motions, of supplementary papers, etc., etc., with which this and the previous records before us abound and by the use of which this case has been taken many times to the court of last resort of Maryland and is here now for the fourth time, as it is in the "interest of the Republic that litigation should come to an end," we pause to say that considering again the whole field and weighing every Federal right asserted, we see no ground for doubting the correctness of the conclusions which constrained us to hold that the controversies presented in the previous cases were beyond our cognizance. Briefly speaking, it is to be observed that the error which in this and the previous cases underlies all the assumptions of Federal right arises from disregarding the distinction between a controversy as to whether the attachments were authorized by the law of the State and the contention as to the power in the State to have given authority to its courts to issue such attachments. The two are widely different, the one being concerned with what state action has been taken and the other with the power of the State to confer authority to take such action. *Castillo* v. *McConnico*, 168 U. S. 674. As to the first, there is no room for controversy, since the decisions of the Maryland court of last resort have explicitly declared not only that the attachments were authorized by the state law, but that as the result of the authority to issue them there was imposed upon the state courts the duty under the facts disclosed by the record to exert their authority to the full extent required to protect the rights of the attaching creditors by seeing to it that the property attached which was in the custody of the court and subject to its control be not permitted to be removed or taken out of the reach of that authority for the purpose of frustrating the rights arising from the attachments. The second, the question of power of the

State of Maryland to authorize its courts to perform the duty thus cast upon them, would seem to be free from all possible doubt in view of the following facts, (a) that the coupon bonds were in the State deposited under the directions of the state court in the exercise of admittedly lawful powers, (b), that in that situation it was impossible to remove them from the State without obtaining the authority of the state courts, an authority which was unaffected by the fact that the bonds were registered, since they were so registered, solely because of the previous action of the state court, an action which the court of last resort of Maryland decided was no obstacle to the attachments of the bonds, since the effect of the state law empowering the attachments was to impose upon the court the duty of seeing to it that this registry should be removed to the extent necessary to protect the rights of attaching creditors. And the force of these suggestions is illustrated by bearing in mind that the denial of all judicial power by the State over the bonds by way of attachment is asserted by the appellant in a proceeding in which he is the actor invoking the exertion of the state judicial power for the purpose of enabling him to obtain possession of the bonds and do away with the effect of the previous state decree concerning the deposit and registry of the same.

Dismissed for want of jurisdiction.